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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. —

FEDERAL POWER COMMISSION, ET AL., PETITIONERS,

v.

ARKANSAS POWER & LIGHT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the Federal Power Commission, Leland Olds, Claude L. Draper and Nelson Lee Smith as Commissioners of said Commission,[1] respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled case on June 28, 1946, and suggests that the judgment of the court below should be reversed without further briefs or argument.

OPINIONS BELOW

The memorandum opinion of the United States District Court for the District of Columbia (R. 41–43)

[1] The complaint also named as defendants Basil Manly and John W. Scott as Commissioners. Mr. Manly and Mr. Scott have since resigned, and their successors have not been substituted as defendants.

is unreported. The opinion of the United States Court of Appeals for the District of Columbia (R. 48–69) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 28, 1946 (R. 70). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where the Federal Power Commission has under consideration, in a proceeding pending before it, questions concerning the proper amounts to be recorded in the accounts of an admitted "licensee" and "public utility" in accordance with the Commission's Uniform System of Accounts, and has set a date for public hearing thereon; and where a state regulatory agency has, with respect to the same subject matter, entered an order prescribing the accounting entries to be made in the general corporate and fundamental books of account of such "licensee" and "public utility", may a United States district court determine, by declaratory judgment, whether the Federal Power Commission or the state agency has exclusive authority to fix the amounts to be recorded in such general corporate and fundamental books of account?

STATUTES INVOLVED

The relevant portions of the Federal Power Act are set forth in Appendix A, *infra*, pp. 20–26. The relevant portions of the Arkansas Utility Act (Act 324 of 1935) are set forth in Appendix B, *infra*, pp. 27–29.

STATEMENT

On January 24, 1945, the Arkansas Power & Light Company ("Company") filed a complaint in the District Court of the United States for the District of Columbia against the Federal Power Commission ("Commission"), its Commissioners, and the Department of Public Utilities of the State of Arkansas ("Arkansas Department")[2] and its Commissioners, seeking a declaratory judgment as to which commission had exclusive jurisdiction over the "primary, dominant and principal books of accounts" of the Company, and requesting that all further action in the proceeding then pending before the Commission be enjoined (R. 20–22).[3]

The facts alleged in the complaint and shown by the attached exhibits may be summarized as follows:

The Company is a "licensee" under the Federal Power Act, and a "public utility" both under that Act and the relevant Arkansas statute (R. 5, 7).[4] In compliance with Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts Prescribed For Public Utilities and Licensees, and Order of May 11, 1937, with respect thereto, the Company, on June 3, 1940, filed with the Com-

[2] The Arkansas Department has been succeeded by the Arkansas Public Service Commission. Act 40 of the Acts of the General Assembly of Arkansas, approved February 12, 1945.

[3] The prayer for an injunction was not pressed in the district court and was expressly abandoned in the brief for the Company before the Court of Appeals.

[4] Section 1 of Act 324 of the Acts of the General Assembly of Arkansas, approved April 2, 1935, Appendix B, *infra*, p. 27.

mission a proposed reclassification of its accounts (R. 9, 26; Exhibit 6 to complaint, p. 1).[5] The Commission staff made a field examination and audit of this proposal and prepared a report which raised questions concerning the accounting entries proposed by the Company (R. 9, 26; Ex. 5). This report was served on the Company by order of June 15, 1943,[6] which directed the Company to show cause why it should not make the adjustments proposed by the staff and submit a revised reclassification of its accounts (R. 27; Ex. 6, p. 1). A response thereto was filed by the Company on September 18, 1943 (R. 27; Ex. 7, p. 1).

On November 10, 1943, the Arkansas Department initiated an accounting and rate proceeding and, after hearing, issued an order on June 24, 1944, fixing rates and, as an incident thereto, requiring the Company to reclassify the amounts in the plant accounts of its "primary, dominant and principal books and accounts" in accordance with the Arkansas Department's Uniform System of Accounts and the findings set forth in its order (R. 6; Ex. 2).[7]

To avoid interference with the Arkansas Department's rate investigation, the Commission deferred

[5] There are nine exhibits to the complaint. These exhibits are not printed but are part of the transcript of the record on file with this Court. Such exhibits will hereinafter be referred to as "Ex."

[6] 3 F. P. C. 1018. By this order the Commission instituted a proceeding against the Company, *In the Matter of Arkansas Power & Light Company*, Docket No. IT–5829.

[7] This order was affirmed by the Circuit Court of Pulaski County, Arkansas (R. 7; Ex. 3). No further review of that decision has been sought.

its own proceeding (R. 27; Ex. 7, p. 2). After the Department's order was issued, however, the Commission's staff, in a supplemental report, raised further questions concerning the Company's proposed reclassification of accounts (R. 9–10; Ex. 6), and the Commission, on September 27, 1944, served this supplemental report on the Company and required it to show cause why the proposed reclassification should not be adjusted to conform with the staff's supplemental recommendations (R. 10–11; Ex. 7).

The Company filed a response to this order and, on November 20, 1944, moved to dismiss the Commission's show cause orders on the grounds that "the primary, fundamental and dominant books of account kept by the * * * [Company] are subject to the jurisdiction and supervision of the Arkansas Department," and "this Commission cannot lawfully exercise the power asserted or attempted to be exercised pursuant to its said show cause order"; that such exercise "would result in an irreconcilable conflict between State and Federal regulatory agencies" and that the Company would incur a "heavy penalty for failure to observe and comply with the * * * order promulgated by the Arkansas Department." (R. 17; Ex. 8, pp. 8–13).

On January 2, 1945, the Commission, upon consideration of the Company's proposed reclassification, the staff's reports thereon, the Commission's prior orders, and the motion to dismiss, ordered that a hearing be held, beginning on February 20, 1945,

"respecting the matters involved and the issue arising out of the proceedings in this matter" (R. 17 27; Ex. 9).[8]

On January 24, 1945, before the date set fo hearing, the Company filed its complaint in th district court (R. 2). In this complaint, it allege that, as a result of the Commission proceeding, i would be required to make certain entries in it "primary, dominant and principal books of accounts and make prescribed dispositions of certain amount (R. 14–15), that such requirements were beyond th jurisdiction of the Commission (R. 11, 13–14), an in direct conflict with those of the Arkansas Depart ment (R. 15). It further alleged that it would no be able to comply with the requirements of bot commissions (R. 16); that the requirements of on or the other of the commissions were void (R. 13–14) that the Arkansas Department threatened to an would prosecute it under the state laws for any failur to observe and comply with the Department's orde (R. 15), and that, should the Commission's order b made final, the Company would be subject to th penalties of the Federal Power Act for non-compliance (R. 15). Therefore, the Company prayed for a injunction against the Commission and for a declara tory judgment that the Arkansas Department ha jurisdiction over the Company's "primary, dominan and principal books of accounts" to the exclusion o the Commission or that "in the event it should b

[8] By subsequent order, the hearing has been postpone indefinitely, pending further order of the Commission.

held that the Commission * * * (has) exclusive jurisdiction the action of the Department * * * (is) void and of no force and effect;" (R. 20–22).

The Department voluntarily appeared in the district court and filed an answer and cross-claim (R. 23). It denied that its order was void (R. 23–24), and, asserting that the Commission could not constitutionally be vested with such jurisdiction (R. 29–30), requested the court to declare that the Department had exclusive jurisdiction over the Company's official corporate records and accounts (R. 32–33).

The district court granted the Commission's motion to dismiss the complaint and cross-claim (R. 41). Relying on *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, the court held that the review provided by Section 313 (b) of the Federal Power Act was exclusive, that the Federal Declaratory Judgment Act did not confer upon the court jurisdiction which it did not otherwise possess, and that therefore the court was without jurisdiction over the subject matter of the complaint (R. 42–43). The court also pointed out that administrative remedies had not been exhausted (R. 43). On appeal taken by the Company,[9] the Court of Appeals,

[9] No appeal was taken by the Arkansas Department. The Attorney General of the State of Arkansas appeared, however, as *amicus curiae* in the Court of Appeals, as he had in the district court, in support of the Company's position. Subsequent to the district court's decision, both the State of Arkansas and the Arkansas Department intervened in the proceeding before the Commission. Order of Commission, dated September 27, 1945.

Judge Morris dissenting, reversed, and held that inasmuch as "the legal relations of the two commissions, which loudly assert adverse legal interest, are involved; and more important still, this controversy touches the legal relations of the company with the two commissions * * *," an "actual controversy" is presented and "the judicial function may be appropriately exercised" (R. 60–61). Accordingly, it ordered the district court to set aside its order dismissing the complaint and to proceed to determine the controversy (R. 63).

SPECIFICATIONS OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

1. In holding that the district court has jurisdiction to entertain a suit for a declaratory judgment upon the facts alleged in the complaint.

2. In holding that the district court has the power, in the circumstances of this case, to determine by declaratory judgment whether the Commission or the Arkansas Department has exclusive jurisdiction over the Company's fundamental corporate books and accounts.

3. In holding that the allegations of the complaint present an "actual controversy" within the meaning of the Federal Declaratory Judgment Act.

4. In holding that the Company and the Arkansas Department or either of them is not required to exhaust administrative remedies before seeking judicial relief.

5. In failing to hold that the district court is without authority to interfere with or limit the scope of the Commission's jurisdiction and authority respecting the matters which are the subject to the pending proceeding before the Commission (*In the Matter of the Arkansas Power & Light Company*, Docket No. IT–5829).

6. In failing to hold that the sole right to judicial review accorded the Company and the Arkansas Department with respect to the matters complained of is the review provided by Section 313 (b) of the Federal Power Act.

7. In reversing the judgment of the district court.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below in the instant case, even more plainly than its recent decision in *Waterman Steamship Corp.* v. *Land*, 151 F. 2d 292, reversed *sub nom. Macauley* v. *Waterman Steamship Corp.*, No. 435, October Term, 1945, decided March 25, 1946, is "at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50–51, and cases cited.

The opinion of the court below completely ignores this Court's decision in the *Myers* case (R. 48–63), and all but ignores the recent reversal by this Court of its decision in the *Waterman Steamship* case (R. 62, note 17). The decision of this Court in the latter

case makes it clear, *a fortiori*, that the decision of the Court of Appeals in the instant case should be reversed. The two cases are similar in that in the *Waterman Steamship* case, the administrative agency had summoned the plaintiff to a conference, whereas here the plaintiff has been called to a hearing. In the *Waterman Steamship* case, this Court required that administrative remedies be exhausted, even assuming that the Renegotiation Act there involved "specifically provides that the Tax Court's determination is not subject to court review; and that even if respondent could, subsequent to a Tax Court determination, have resort to the courts, it would be subjected to a multiplicity of suits in order to recover the money due on the contracts." No. 435, October Term, 1945, slip opinion, pp. 3–4. In the case at bar, it is perfectly clear that any final order that the Commission may ultimately issue will be subject to judicial review (Section 313 (b), Appendix A, *infra*, pp. 25–26), and there is no allegation, or possibility, that a multiplicity of suits would be necessary in order to have the order of the Commission set aside. Nevertheless, the court below has directed the district court to decide a question which is still pending before the commission. See *supra*, pp. 5–6, ~~note 3~~.

The decision below is, therefore, in direct conflict with applicable and controlling decisions of this Court.

2. The holding of the Court of Appeals, that the presence of the "actual controversy" which it found

existed [10] is sufficient to require the district court to take jurisdiction, ignores the principle that statutory provisions for appellate review of administrative action, such as Section 313 (b) of the Federal Power Act, are exclusive. See *Federal Power Commission* v. *Pacific Power & Light Co.*, 307 U. S. 156, 159; cf. *Securities and Exchange Commission* v. *Andrews*, 88 F. 2d 441 (C. C. A. 2); *Miles Laboratories, Inc.* v. *Federal Trade Commission*, 140 F. 2d 683, 684–685 (App. D. C.), certiorari denied, 322 U. S. 752; *Black River Valley Broadcasts* v. *McNinch*, 101 F. 2d 235, 237–238 (App. D. C.), certiorari denied, 307 U. S. 623; *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 124 F. 2d 800, 804–805 (C. C. A. 3), certiorari denied, 316 U. S. 663.[11] While purporting to recognize the exclusiveness of the court review provided in Section 313 (b) (R. 56–61), the court below refused to apply that provision in the instant case on the basis of distinctions which we submit are invalid.

(a) The Court of Appeals based its refusal to apply the exclusive remedy rule on the gound that "As the federal commission has made no final order, there is nothing from which an appeal could be taken

[10] The lack of an "actual controversy" is pointed out, *infra*, pp. 15–17.

[11] The section of the Securities Exchange Act (15 U. S. C. 78y) relating to court review is precisely the same in regard to exclusiveness as Section 313 (b), Appendix A, *infra*, pp. 25–26; the corresponding section of the Federal Trade Commission Act (15 U. S. C. 45 (d)) is substantially the same; that in the Federal Communications Act (47 U. S. C. 402 (b), (c), and (e)) contains no such provision. These were the statutes involved in the *Andrews*, *Miles Laboratories*, and *Black River Valley Broadcasts* cases.

by the company under the statutory scheme of appeal." (R. 61.) Since there is never a final order when administrative remedies have not been exhausted, this theory would nullify the entire exhaustion doctrine. Implicit in the statement of the court below is the assumption that so long as no final order is involved the courts will undertake, even at preliminary stages, to resolve conflicts arising in administrative proceedings. This assumption is patently unsound since it is well established that interlocutory and procedural orders, issued with reference to questions raised at the preliminary stages of administrative proceedings, are at that time not ripe for judicial determination. *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S. 375, 383–385, and cases cited; *United States* v. *Los Angeles Railroad Co.*, 273 U. S. 299, 309. The court below treated the exhaustion requirement and the rule with respect to following the judicial review procedures provided by statute as wholly unrelated to each other when they are, in fact, complementary.

(b) Nor is there any validity to the view of the court below that resort to Section 313 (b) is excused where the issue in the case is not the propriety of "accounting practices" or "bookkeeping entries" but the "purely legal problem" of determining the right to control the accounting records of the company (R. 56–57). This is merely another way of saying that questions of coverage are exempted from the exhaustion requirement; but it was the Court of Appeals' adoption of this very theory that was

reversed in the *Waterman Steamship* case. And in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 49–50, the statutory review procedure was held to be exclusive even though the issue in the case was solely one of coverage—of the constitutional power of the National Labor Relations Board over the Bethlehem Shipbuilding Corporation.

3. The court below refused to require an exhaustion of administrative remedies, holding that there was involved not merely the sweep of the Federal Power Act but a conflict between that Act and a "statute of one of the States of the Union," and that the requirement of exhaustion would force a sovereign State to "appear before a federal administrative body in order to have determined the legal effect of one of its own statutes considered in connection with a related federal statute" (R. 62).

In the first place, as we have seen, the Commission has issued no final order, and there is not as yet, and may never be, a conflict between the federal and state statutes as applied by the respective regulatory agencies. In the second place, it is the Commission's view that the State of Arkansas, through the Arkansas Department, may and should intervene in the proceedings before the Federal Power Commission, exhaust its administrative remedies, and, if dissatisfied with the decision of the Commission, appeal to a circuit court of appeals. It was plainly contemplated by the Federal Power Act that this would be the only procedure whereby States and their regulatory agencies might seek a resolution of any disagree-

ment with the Commission. Section 302 (b) of that Act requires the Commission, before prescribing certain accounting and record requirements, to "notify each *State commission* having jurisdiction with respect to any public utility involved," to give a "reasonable opportunity to each such commission to present its views", and to receive and consider such views; Section 308 (a) states that when holding hearings, the Commission "may admit as a party any interested *State, State commission*, municipality * * * "; Section 313 (a) provides that "Any person, *State*, municipality, or *State commission* aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, *State*, municipality, or *State commission* is a party may apply for a rehearing" (italics supplied); and Section 313 (b) continues: "Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order * * * ." [12] This procedure has been utilized frequently by States and their regulatory commissions, which commonly appear before the Commission to present evidence and argument for its consideration (see, e. g., *First Iowa Hydro-Electric Cooperative* v. *Federal Power Com-*

[12] Section 306 also provides that "Any person, *State*, municipality, or *State commission* complaining of anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act may apply to the Commission by petition * * * ." (italics supplied) The texts of the above cited sections of the Act appear in Appendix A, *infra*, pp. 23–26.

mission, No. 603, October Term, 1945, decided April 29, 1946), and, when "aggrieved" by the Commission's order, seek judicial review under Section 313 (b). See, e. g., *Department of Conservation of Louisiana* v. *Federal Power Commission*, 148 F. 2d 746 (C. C. A. 5), certiorari denied, 326 U. S. 717–718; *Wisconsin Public Service Corp.* v. *Federal Power Commission*, 147 F. 2d 743 (C. C. A. 7), certiorari denied, 325 U. S. 880. In fact, both the Arkansas Department and the State of Arkansas have intervened in the proceeding now pending before the Commission. See *supra*, p. 7, note 9.

Furthermore, the "Commission would have been justified in following its own interpretation of the Federal Power Act * * *" and in ordering the Company to conform to its requirements regardless of "any other laws of the State of * * * [Arkansas] which the Commission held to be inapplicable or to have been superseded by the Federal Power Act." Cf. *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, *supra*, slip opinion, at pp. 5–6. Obviously then, the procedure urged by the Commission involves no "novel extension of federal administrative power" (R. 62).

4. The court below adopted the Company's allegation that the Commission's action, in setting a date for hearing on the recommendations of the Commission's staff, created a "patent and irreconcilable conflict" with the Arkansas Department's order of June 24, 1944, which asserted jurisdiction over the Company's "primary, dominant and prin-

cipal books of accounts," requiring that they be kept in accordance with the Arkansas Department's uniform system of accounts, and that certain entries be made (R. 3). This "conflict" was not "irreconcilable," since the Commission was not making demands on the Company in regard to its books and accounts, nor was the Company prohibited from complying with requirements of the Department by any order of the Commission. The service of the staff reports by the Commission's orders of June 15, 1943, and September 27, 1944, had the effect, under Section 301 (a) of the Act, Appendix A, *infra*, p. 22, of pointing out "every accounting entry questioned by the Commission" so as to place on the Company the "burden of proof to justify" the proposed entries. Thus the staff reports merely specified the issues to be heard and did not create a conflict with the Department's order; accordingly there was no "concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged." *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, 241. Nor was there an actual or immediately threatened invasion of legal rights of either the Department or the Company, in the absence of which a "case or controversy" could not exist. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324–325; *National War Labor Board* v. *Montgomery Ward & Co.*, 144 F. 2d 528 (App. D. C.), certiorari denied, 323 U. S. 774; cf. *Dalton Machine Co.* v. *Virginia*, 236 U. S. 699, 701.

Since the Commission had only questioned the Company's proposed accounting entries, the Company's allegations, adopted by the court (R. 57–58, 60), that the result of the Commission hearing was a foregone conclusion, were "not statements of fact at all but mere predictions." *National War Labor Board* v. *Montgomery Ward & Co., supra*, at 530. Thus, the conflict over jurisdiction is only hypothetical and may never become real, again clearly demonstrating the lack of a "case or controversy." *Electric Bond & Share Co.* v. *Securities & Exchange Commission*, 303 U. S. 419, 443; *Maryland Casualty Co.* v. *Pacific Co.*, 312 U. S. 270, 273; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461.

Futhermore, the Court's conclusion that the Company "would be faced with the dangerous possibility of making an erroneous interpretation of the two statutes and, because of it, of suffering pains and penalties which follow a violation of the law" (R. 61), is unwarranted. As already pointed out, there is no Commission order outstanding creating such a "dangerous possibility." Moreover, any such order when issued would be subject to stay by the Commission or the courts on proper showing pending judicial review under Section 313 (b). Section 313 (c), Appendix A, *infra*, p. 26.

5. We need hardly labor the serious consequences, with respect to all federal administrative agencies, of allowing the judgment of the court below, which uses the declaratory judgment procedure to undermine the rule requiring exhaustion of administrative reme-

dies, to stand unreversed.[13] The repercussions of the decision below on the Federal Power Commission, in particular, will be far reaching, whether viewed broadly, or limited to potential disagreements between federal and state authority; under this ruling a "public utility" or "licensee", admittedly subject to the Federal Power Act, may, in the preliminary stages of the administrative process, invoke the Federal Declaratory Judgment Act to challenge in the courts the scope of the Commission's powers. As pointed out by the National Association of Railroad and Utilities Commissioners,[14] to accord to

[13] The decision of the court below is unaffected by the Administrative Procedure Act (Pub. L. No. 404, 79th Cong., 2d Sess., c. 324, approved June 11, 1946). For one thing, the Act first became operative on September 11, 1946, and is not retroactive. Section 12. Secondly, Section 10 (b), entitled "Form and Venue of Action", which provides that "the form of proceeding for judicial review shall be any special statutory review proceeding * * * in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments * * *) in any court of competent jurisdiction," and Section 10 (c), limiting "reviewable acts" to "every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court * * *" are intended only to declare the existing law concerning judicial review of administrative proceedings. Sen. Rep. No. 752, 79th Cong., 1st Sess., Appendix B (Attorney General's Statement), pp. 43–44; 92 Cong. Rec. 5759. There is no "reviewable act" present in the instant case, and, in any event, provisions for court review, such as Section 313 (b), have been, and still are, adequate.

[14] Bulletin No. 110—1946 to Member Commissions, dated July 16, 1946.

utilities the right "to ask for a declaratory judgment in any case where a State Commission claims jurisdiction over any extension, or service, or over rates for any service, or with respect to any matter of regulation, to the exclusion of the FPC * * * will give rise to a very considerable volume of Declaratory Judgment Act litigation." Many such issues have been, and can continue to be, resolved or obviated in the normal course of administrative proceedings. Under the decision below, however, the district court would be substituted for the Commission as the tribunal for the trial of such issues, and thus delay, if not wholly nullify, effective regulation.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted. Moreover, the basic question in this case has very recently been before this Court and has been resolved contrary to the decision of the court below. Under the circumstances, we believe that it would be appropriate for this Court to reverse the judgment of the Court of Appeals without further briefs or argument.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

BRADFORD ROSS,
General Counsel, Federal Power Commission.

SEPTEMBER 1946.

APPENDIX A

The pertinent provisions of the Federal Power Act (49 Stat. 838, 16 U. S. C. 791, *et seq.*) are as follows:

SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in

intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

SEC. 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

(b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost

of all additions, betterments, extensions, and new construction.

SECTION 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however*, That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

* * * * *

SEC. 302. (a) The Commission may, after hearing require licensees and public utilities to carry a proper and adequate depreciation

account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such licensee or public utility shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its juridiction, with respect to any public utility, the percentage rate of depreciation to be allowed, as to any class of property of such public utility, or the composite depreciation rate, for the purpose of determining rates or charges.

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

SEC. 306. Any person, State, municipality,

or State commission complaining of anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

SEC. 308. (a) Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

* * * *

SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The applica-

tion for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for

failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

APPENDIX B

The pertinent provisions of the Arkansas Utility Act (Act 324 of the Acts of the General Assembly of Arkansas, approved April 2, 1935) are as follows:

SEC. 1 (d). The term "public utility" when used in this Act, includes persons and corporations, or their lessees, trustees and receivers, now or hereafter owning or operating in this state, equipment or facilities for:

(1) Producing, generating, transmitting, delivering, or furnishing gas, electricity, steam or other agency for the production of light, heat or power to, or for, the public for compensation;

* * * * *

(3) The term "public utility" as used in this Act for rate making purposes only shall include persons and corporations, or their lessees, trustees and receivers producing, generating, transmitting, delivering or furnishing any of the foregoing services to any other person or corporation for resale or distribution to or for the public for compensation.

SEC. 2 (a). There is hereby created a department of the Arkansas Corporation Commission to be known as the "Department of Public Utilities." It shall consist of three members to be known as commissioners, one of whom shall be a lawyer. * * *

SEC. 8 (c). The Department is hereby empowered, after hearing and upon notice, to make, and from time to time, in like manner, alter or amend such reasonable rules pertaining to the operation, accounting, service and rates of public utilities, and of the practice and procedure governing all investigations

by, and hearings and proceedings before
Department, as it may deem proper and
inconsistent with this Act.

SEC. 19. The Department, upon compla
or upon its own motion, shall, upon reasona
notice and after a hearing, have the power

(1) Find and fix just, reasonable,
sufficient rates to be thereafter observed,
enforced and demanded by any public utili

* * * * *

(4) Ascertain and fix the value of the wh
or any part of the property of any pub
utility, insofar as the same is material to
exercise of the jurisdiction of the Departme
and the Department may make revaluati
of the whole or any part of said proper
from time to time and ascertain the value
any new construction, extension, and ad
tions to, or retirements from, the property
every public utility.

(5) Require any or all public utilities
carry a proper and adequate depreciat
account in accordance with such rules, re
lations and forms of account as the Depa
ment may prescribe; ascertain and determi
and by order fix the proper and adequ
rates of depreciation of the several classes
property of each public utility. Each pub
utility shall conform its depreciation accou
to the rates so ascertained, determined a
fixed by the Department.

SEC. 22 (a). The Department, by ord
may establish uniform system of accounts
be kept by any public utility subject to
jurisdiction, or may classify said public ut
ties and establish a system of accounts
each class, and the Department may prescri
the manner in which such accounts shall
kept.

SEC. 61 (a). Every public utility, and eve

person, or corporation, shall obey and comply with each and every requirement of this Act and of every order, decision, direction, rule or regulation made or prescribed by the Department in the matters herein specified, or any other matter in any way relating to or affecting the business of any public utility, and shall do everything necessary or proper in order to secure compliance with, and observance of, every such order, decision, direction, rules or regulation by all officers, agents, and employees of every public utility.

(b). Any person or corporation which violates any provision of this Act or fails to comply with every lawful order, decision, direction, rule or regulation made or prescribed by the Department, or any part or provision thereof, shall be deemed guilty of a misdemeanor and upon conviction, subject to a penalty of not less than $100 nor more than $1,000 for each such offense.

U. S. GOVERNMENT PRINTING OFFICE: 1944